The Patriot-News Company *and* Local No. 16, The Newspaper Guild, AFL–CIO. Case 4–CA–19611

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 17, 1992, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Patriot-News Company, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent asserts that certain findings made by the judge demonstrated bias against the Respondent. After a careful examination of the entire record, we are satisfied that this allegation is without merit.

We find it unnecessary to rely on the judge's citation of *Alle Arecibo Corp.*, 264 NLRB 1267, 1274 (1982), to support the proposition that claiming confidentiality with regard to compensation of unit employees is not an excuse for refusing to provide such information. Nevertheless, we agree with this proposition; see *Evening News Assn.*, 270 NLRB 380 (1984), enfd. 759 F.2d 959 (D.C. Cir. 1985).

We find it unnecessary to rely on the judge's comment that it is ironic that a newspaper publisher that routinely publishes the salaries of all sorts of persons will not disclose, without condition, the Christmas bonuses of its unit employees to the Union which represents them.

Steven B. Goldstein, Esq., for the General Counsel.
Bruce H. Berry, Esq. and *Sidney D. Kress, Esq.*, of New York, New York, for the Respondent.
James A. Diamond, Esq., of Camp Hill, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On March 4, 1991, Local No. 16, the Newspaper Guild (the Union), filed a charge against the Patriot-News Company (the Respondent).

On March 29, 1991, the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint alleging that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), when it failed and refused to furnish the Union with the names of unit employees who received Christmas bonuses in 1990 and the amount of the bonuses.

Respondent filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me in Philadelphia, Pennsylvania, on November 4, 1991.

On the entire record, including my observation of the demeanor of the two witnesses who testified, and after consideration of the briefs submitted by the General Counsel, Respondent, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Patriot-News Company, Respondent, is, and has been at all times material herein, a Pennsylvania corporation engaged in the publication of newspapers in Harrisburg, Pennsylvania.

During the past year, in the course and conduct of its business operations described above, Respondent derived gross revenues in excess of $200,000 and purchased and received materials and supplies valued in excess of $50,000 directly from points outside the State of Pennsylvania.

Respondent admits, and I find, that it is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Local No. 16, the Newspaper Guild, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *A Unit of Editorial Department Employees is an Appropriate Unit*

Respondent publishes three newspapers, the Patriot, a Monday to Saturday morning newspaper, the Evening News, a Monday to Friday afternoon newspaper, and the Sunday Patriot News, a Sunday only newspaper.

For some years Respondent has recognized and bargained with the Union, which represents a unit of ''regular or full-time employees'' in the editorial department of Respondent, except such employees as are otherwise specifically exempted. The employees in the editorial department work on all three of Respondent's newspapers. Apparently there was never a Board certification of a unit.

Three collective-bargaining agreements were introduced into evidence at the trial before me. The list of specifically exempted editorial department employees from the unit varied from agreement to agreement. The three collective-bargaining agreements covered the period of July 1, 1979, to June 30, 1982, July 1, 1982, to June 30, 1987, and July 1, 1987, to June 30, 1990. In May 1990 the parties began negotiations for a collective-bargaining agreement to succeed the 1987 to 1990 agreement. Article XIX in this last contract provided, in pertinent part, that ''the terms and conditions of the Agreement shall remain in effect during such negotia-

tions if they extend beyond June 30, 1990.'' As of the date of the hearing before me, November 4, 1991, the parties were still negotiating for a new agreement.

One of the issues on the table was whether or not certain employees should be given new titles and removed from the unit because Respondent claimed they were supervisors or managerial personnel. No agreement on this had been reached. Respondent was urging the exclusion of approximately 12 employees from the unit. The unit consists of 91 employees. Fifty-six of the employees in the unit are members of the Union. In other words, if Respondent got all it wanted the unit would consist of 79 employees.

The unit is described in article I of the 1987 to 1990 agreement, which is still in effect, as follows:

> 1. All conditions and benefits contained in this Agreement shall apply to all regular or full-time employees who are now or hereafter may be employed in the Editorial Department of The Patriot-News Co., except such employees as are otherwise specifically exempted.
>
> 2. The following employees are excluded from the application of this Agreement: Editor (Editor-in-Chief), Managing Editors, Editorial Assistant to the Publisher, Executive Editor, one confidential secretary to each such executive, two Associate Editors, Editorial Page Editors, two news Editors, State Editor, City Editors, Chief Assistant City Editor/The Patriot, Chief Assistant City Editor/The Evening News, Chief Assistant City Editor/Metro, Chief Assistant City Editor/Lebanon, Lifestyle Editors, Sports Editor and Sunday Editor.

Respondent claims that the General Counsel has failed to prove that an appropriate unit for collective-bargaining purposes exists and, therefore, the finding of a violation of Section 8(a)(5) of the Act, i.e., a failure to bargain in good faith, cannot be made.

I disagree that the General Counsel has failed to prove that an appropriate unit for collective bargaining exists. Respondent concedes by seeking in negotiations for a new agreement which excludes 12 persons from the unit as managers or supervisors that a unit of 79 editorial department employees exists. But be that as it may, the party seeking to exclude persons from a unit agreed to in a contract still in effect by agreement of the parties has the burden of proving exclusions from the unit. No such proof was presented at the hearing. Nor has a unit clarification petition been filed. Lastly, a unit of editorial employees has long been held to be an appropriate unit for collective bargaining. See, e.g., *Detroit News*, 270 NLRB 380 (1984); *Peoria Journal Star*, 117 NLRB 708 (1957). The unit agreed to in the 1987–1990 agreement which has been extended by agreement of the parties, is *not* an inherently inappropriate unit, hence, the agreement of the parties as to what is the appropriate unit is given greater weight than would be the case if the unit was inherently inappropriate. See *NLRB v. Cardox*, 699 F.2d 148 (3d Cir. 1983).

B. *Respondent's Failure to Unconditionally Turn Over 1990 Christmas Bonus Data for Unit Employees Violated Section 8(a)(1) and (5) of the Act*

Compensation for employees in the editorial department is a total of the following: minimum salary and merit pay covered in article III of the contract, individually bargained pay covered in article XIII, and a Christmas bonus, which some employees in the unit receive and some do not, but which has been historically given but is not mentioned at all in the collective-bargaining agreement.

Article IV of the contract provides, in pertinent part, as follows:

> The Publisher shall supply the Guild, on request, but not more than once a year, with a list containing the following information for all employees covered by this Agreement:
>
> (a) Names, address, sex, social security number and date of birth.
>
> (b) Date of hiring.
>
> (c) Classification.
>
> (d) Experience rating and experience anniversary date.
>
> (e) Salary

It is clear that the Union, by contract, is entitled to receive names and salary information of employees in the unit.

On December 18, 1990, the Union requested that it be furnished with the names of unit employees who received Christmas bonuses in 1990 and the amounts of the bonuses. Respondent said it would furnish the information.

At the next meeting on February 28, 1991, the Union renewed its request. Respondent admits that at this meeting it had in its possession the names of the 10 to 15 unit employees who received Christmas bonuses in 1990 and the amount they received but would turn the information over to the Union only if the Union gave a pledge of confidentiality that the information would be made known only to the members of the union negotiating committee, which consisted of 5 people, i.e., 1 representative of the International and 4 Local 16 officials.

The Union filed an unfair labor practice charge on March 4, 1991, over this matter and the complaint issued on March 29, 1991. At a subsequent negotiating session in May 1991 Respondent told the Union that the pledge of confidentiality could be expanded to include the Union's lawyer, and at the hearing before me Respondent suggested it might turn over the information with the names deleted but a notation as to whether or not the individual recipient of a Christmas bonus in 1990 was or was not a member of the Union.

Respondent's conditioning its release of information regarding which unit employees received a 1990 Christmas bonus and how much, was an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act.

A Union is entitled upon request to information which is necessary for and relevant to its collective-bargaining obligations. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Information regarding wages or compensation is presumptively relevant and must be provided to a union upon

request. *Sandpiper Convalescent Center*, 279 NLRB 1129 (1986); *Michigan Rent-To-Own*, 286 NLRB 1415 (1987). Claiming confidentiality with regard to compensation of unit employees is not an excuse for refusing to provide such information. *Alle Arecibo Corp.*, 264 NLRB 1267, 1274 (1982). In fact, the Board has specifically rejected an employer's argument of confidentiality where the employer was in the newspaper business as is the Respondent in the instant case. See *Detroit News*, 270 NLRB 380 (1984), enfd. 759 F.2d 959 (D.C. Cir. 1985).

Respondent's reliance on *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), for authority to condition the release of wage data is misplaced. The data in the *Detroit Edison Co.* case concerned psychological tests given to its employees by psychologists in order to screen applications for certain positions, and the tests had been given with the express proviso that the results would be kept strictly confidential and the results were not even made available to the management of the Detroit Edison Company. The data sought by the Union in the *Detroit Edison Co.* case was inherently sensitive and vastly different from the data sought in the instant case.

The Union wanted data on which unit employees received Christmas bonuses in 1990 and how much they received for a variety of reasons. The Union was in negotiations for a new contract which would include salary proposals and knowledge as to the amount of money available for Christmas bonuses might persuade the Union to try for a higher percentage increase across the board than the 1.7 percent proposed by Respondent. In addition, depending on the number of persons receiving Christmas bonuses, possibly the issue of Christmas bonuses should be specifically addressed in the contract.

Article XIII, section 5, of the contract provides, as follows:

> No employee shall be discriminated against in regard to hire, dismissal or otherwise because of his membership, or *activities* in the Guild, or because of age, sex, race, creed, color, national origin, marital or parental status. [Emphasis added.]

It is clear that without knowledge of exactly who received Christmas bonuses and how much, it will be difficult indeed to police this section of the contract.

In short, it is obvious that the data requested was relevant to and necessary for the Union to carry out its collective-bargaining responsibilities.

Respondent refused to turn over the 1990 Christmas bonus data unconditionally on the grounds that in the past the Union posted on a union bulletin board the merit pay received by unit employees and a number of employees were annoyed that data on their merit pay was posted on the union bulletin board at the newspaper where newspaper employees and visitors to the newsroom could see it. The Union, in the instant case, told Respondent it had no plans to post the 1990 Christmas bonus data on the bulletin board. In addition, the Union in the past received data on the emission of potentially dangerous electromagnetic rays from video display terminals (VDT) and to the annoyance and surprise of Respondent the Union released this information to a publication called VDT News, which is a VDT health and safety report publication.

The fact is the data sought in this case is not sensitive in nature and clearly is needed by the Union and the Union should not be put in a straitjacket regarding its use of the data.

It is, of course, somewhat ironic that a publisher of newspapers which routinely publishes the salaries of all sorts of persons in public and private life will not disclose, without condition, the Christmas bonuses of its unit employees to the Union which represents them.

CONCLUSIONS OF LAW

1. The Patriot-News Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 16, the Newspaper Guild, is a labor organization within the meaning of Section 2(5) the Act.

3. By refusing to bargain collectively with the Union by refusing to furnish without condition to the Union the names of unit employees who received Christmas bonuses in 1990 and the amounts of the bonuses, the Respondent has violated Section 8(a)(1) and (5) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, The Patriot-News Company, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union with the names of unit employees who received Christmas bonuses in 1990 and the amounts of the bonuses.

(b) Failing and refusing to bargain collectively within the Union as the exclusive representative of the employees in the bargaining unit in the editorial department.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union without condition the requested information concerning the names of unit employees who received Christmas bonuses in 1990 and the amounts of the bonuses.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish without condition to the Union the names of unit employees who received Christmas bonuses in 1990 and he amounts of the bonuses.

WE WILL NOT fail or refuse to bargain collectively with the Union as the exclusive representative of the employees in the bargaining unit in the editorial department.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union without condition the requested information concerning the names of unit employees who received Christmas bonuses in 1990 and the amounts of the bonuses.

THE PATRIOT-NEWS COMPANY